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Attorneys for Mr. Garcia-Nunez

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
(HONORABLE JEFFREY T. MILLER)

UNITED STATES OF AMERICA,

Plaintiff,

v.

JUAN GARCIA-NUNEZ,

Defendant.

Case No.: 08CR1721-JM

Date: August 15, 2008

Time: 1:30 p.m.

NOTICE OF MOTIONS AND MOTIONS TO:

(1) COMPEL DISCOVERY; AND

(2) LEAVE TO FILE FURTHER MOTIONS.

TO: KAREN P. HEWITT, UNITED STATES ATTORNEY; AND
CALEB E. MASON, ASSISTANT UNITED STATES ATTORNEY:

PLEASE TAKE NOTICE that on August 15, 2008, at 1:30 p.m., or as soon thereafter as counsel may be heard, the accused Juan Garcia-Nunez, by and through his attorneys, Erick L. Guzman and Federal Defenders of San Diego, Inc., will ask this Court to enter an order granting the motion outlined below.

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MOTIONS

Defendant, Mr. Garcia-Nunez, by and through his attorneys, Erick L. Guzman and Federal Defenders of San Diego, Inc., pursuant to the United States Constitution, the Federal Rules of Criminal Procedure, and all other applicable statutes, case law and local rules, hereby moves this Court for an order to:

- (1) Compel Discovery; and
- (2) Leave to File Further Motions.

These motions are based upon the instant motions and notice of motions, the attached statement of facts and memorandum of points and authorities, and any and all other materials that may come to this Court's attention at or before the time of the hearing on these motions.

Respectfully submitted,

Dated: July 9, 2008

/s/ Erick L. Guzman
ERICK L. GUZMAN
Federal Defenders of San Diego, Inc.
Attorneys for Mr. Garcia-Nunez
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Attorneys for Mr. Garcia-Nunez

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA
 (HONORABLE JEFFREY T. MILLER)

UNITED STATES OF AMERICA,)	Criminal No. 08CR1721-JM
)	
Plaintiff,)	DATE: August 15, 2008
)	TIME: 1:30 P.M.
v.)	
)	MEMORANDUM OF POINTS AND
JUAN GARCIA-NUNEZ)	AUTHORITIES IN SUPPORT OF
)	DEFENDANT'S MOTIONS
Defendant.)	

I.

STATEMENT OF FACTS¹

On April 8, 2008, Mr. Garcia was arrested for illegal entry pursuant to 8 U.S.C § 1326. On May 28, 2008, the government indicted Mr. Garcia, charging him with violating 8 U.S.C. §1326. On July 3, 2008, he pled not guilty. These motions follow.

II.

COMPEL ALL DISCOVERABLE MATERIAL

Mr. Garcia requests all discoverable material pursuant to Federal Rule of Criminal Procedure 16, Brady v. Maryland, 373 U.S. 83 (1963), Giglio v. United States, 405 U.S. 150 (1972). This includes material that may support any defense pre-trial motions. See United States v. Cedano-Arellano, 332 F.3d 568 (9th Cir. 2003) (Rule 16 applies to discovery material to defense pre-trial motions); United States v. Gamez-

¹ These "facts" are based on discovery provided by the government. Mr. Garcia does not concede the veracity of any of these allegations.

1 Orduno, 235 F.3d 453, 462 (9th Cir. 2000) (Brady applies to material supporting defense pre-trial motions).
2 Mr. Garcia also requests any evidence that the government may potentially attempt to enter vis-a-vis rule
3 Federal Rule of Evidence 404(b).

4 Mr. Garcia also requests the court to order access to his "A-File" pursuant to Rule 16(a)(1)(B) of the
5 Federal Rule of Criminal Procedure, which provides that "upon request of the defendant, the government
6 shall furnish to the defendant such copy of his prior criminal record, if any, as is within the possession,
7 custody, or control of the government"

8 Mr. Garcia requests all arrest reports, investigator's notes, memos from arresting officers, dispatch
9 tapes, sworn statements, and prosecution reports pertaining to Mr. Garcia and available under Fed. R. Crim.
10 P. 16(a)(1)(B) and (C), Fed. R. Crim. P. 26.2 and 12(I). Mr. Garcia specifically requests that all dispatch
11 tapes or any other audio or visual tape recordings which exist and which relate in any way to his case and
12 or his arrest be preserved and provided in their entirety.

13 Specifically, Mr. Garcia requests a copy of the audiotape of *any* deportation hearing, as well as a
14 transcript of any such proceeding.

15 **III.**

16 **LEAVE TO FILE FURTHER MOTIONS**

17 Mr. Garcia has not yet received all requested discovery nor viewed his "A-File." After doing so, it
18 is likely that Mr. Garcia will need to file additional motions. Mr. Garcia respectfully requests the Court grant
19 leave to file further motions if necessary.

20 **IV.**

21 **CONCLUSION**

22 Mr. Garcia requests that the Court to grant the above motions.

23 Respectfully submitted,

24 Dated: July 9, 2008

25 /s/ Erick L. Guzman
26 ERICK L. GUZMAN
27 Federal Defenders of San Diego, Inc.
28 Attorneys for Mr. Garcia

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Case No. 08cr1721-JM
)	
v.)	
)	CERTIFICATE OF SERVICE
JUAN GARCIA-NUNEZ,)	
)	
Defendant.)	
_____)	

Counsel for Defendant certifies that the foregoing pleading, is true and accurate to the best of his information and belief, and that a copy of the foregoing Defendant's Notice of Motions and Motions has been electronically served this day upon:

Caleb Mason
U.S. Attorney's Office
880 Front Street
San Diego, CA 92101

Dated: July 9, 2008

/s/ Erick L. Guzman
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